

EXHIBIT A



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION OPIATE LITIGATION

MDL NO. 2804

Track One

PRELIMINARY EXPERT REPORT AND DISCLOSURE OF
SONYA KWON
ANKURA CONSULTING

MAY 10, 2019

HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER



- d. The ARCOS data shows that CVS distributed less than [REDACTED] of relevant opioids into Cuyahoga and Summit counties between 2006 and 2014 and distributed an estimated [REDACTED] of total relevant opioids into Cuyahoga and Summit counties between 2006 and 2018.
- e. Between 2006 and 2013, CVS shipments of HCPs increased at a slower rate than the annual DEA quota for hydrocodone.
- f. Between 2006 and 2014, non-controlled substances represent approximately [REDACTED] of dosage units shipped to CVS pharmacies in Cuyahoga and Summit counties by CVS distribution centers.
- g. Between 2006 and 2014, HCPs represented less than [REDACTED] of total dosage units shipped to CVS pharmacies in Cuyahoga and Summit counties by CVS distribution centers.
- h. Between 2006 and 2014, controlled substances represent less than [REDACTED] of total dosage units shipped to CVS pharmacies in Cuyahoga and Summit counties by CVS and Cardinal Health.
- i. Between 2006 and 2014, HCPs represent less than [REDACTED] of total dosage units shipped to CVS pharmacies in Cuyahoga and Summit counties by CVS and Cardinal Health.
- j. Between 2006 and 2014, CVS pharmacies in Cuyahoga and Summit counties ordered a small percentage of HCPs from Cardinal Health.

VII. CVS DISTRIBUTED ONLY TO CVS PHARMACIES

18. The CVS distribution centers at issue in this case distributed prescription drugs only to CVS pharmacies. CVS's corporate representative testified that these CVS distribution centers "have only distributed controlled substances to CVS pharmacies."²¹ CVS discovery responses likewise indicate that CVS's distribution centers "did not distribute hydrocodone combination products [the only relevant prescription opioid shipped by CVS] to any pharmacies in Cuyahoga and Summit Counties other than the CVS CT1 pharmacies."²²
19. To confirm this testimony, I analyzed the CVS distribution data to evaluate the recipients of shipments from CVS in Cuyahoga and Summit Counties. I reviewed the store numbers receiving shipments from CVS Distributors and found that all shipments from CVS were shipped to CVS pharmacies. A listing of these 85 stores is included in Exhibit 2A.²³ The total number of shipments to these stores is shown in Table 1, below.

²¹ Deposition of Mark Vernazza, November 20, 2018, p. 56, line 10.

²² CVS Indiana, L.L.C.'s and CVS RX Services, Inc.'s Amended Objections and Responses to Interrogatories No. 1-6, 8-10, 13, 15-18, 20-21 and 30 of Plaintiffs' First Set of Interrogatories, September 10, 2018, p. 8.

²³ There are 69 CVS stores in the distribution data with shipments between 1/1/2006 and 9/30/2014.



Table 1: Total Shipments to CVS Pharmacies in Cuyahoga and Summit Counties from CVS Distribution Centers (CVS Distribution Data)

Year	Total # of Shipments to CVS Pharmacies	# of Shipments Controlled Substances to CVS Pharmacies	Total # of Shipments by CVS Distribution Centers to Non-CVS Stores
2002	471,399	23,093	0
2003	1,074,542	54,967	0
2004	1,105,264	52,906	0
2005	1,239,570	60,822	0
2006	1,242,175	66,904	0
2007	1,241,097	68,079	0
2008	1,243,839	71,772	0
2009	1,144,654	66,413	0
2010	1,091,329	63,355	0
2011	1,055,579	60,999	0
2012	1,068,846	62,191	0
2013			
2014			
2015			
2016			
2017			
2018			
Total:			

20. I also analyzed the ARCOS data, filtered as described above in Section III, to evaluate the buyers of CVS shipments into Cuyahoga and Summit Counties. I found all shipments reported in the ARCOS data by CVS distribution centers were shipped to CVS pharmacies. A listing of these 69 stores is included in Exhibit 2A.

Table 2: Total Shipments from CVS Reporters into Cuyahoga and Summit Counties (ARCOS Data)

Year	# of Shipments to CVS Pharmacies	# of Shipments to non-CVS Buyers
2006	15,069	0
2007	17,289	0
2008	17,896	0
2009	16,447	0
2010	16,551	0
2011	16,771	0



2012	17,142	0
2013	<div style="background-color: black; width: 100%; height: 100%;"></div>	
2014		
Total		

VIII. CVS NEVER DISTRIBUTED SCHEDULE II OPIOIDS, SUCH AS OXYCODONE, INTO CUYAHOGA AND SUMMIT COUNTIES

21. The DEA categorizes “drugs, substances, and certain chemical used to make drugs” into various schedules based, in part, on the potential for abusing the drug.²⁴ The Court has limited discovery in this case to “opioid products that are or ever were classified as Schedule II under the Controlled Substances Act.”²⁵ The DEA defines Schedule II drugs as “drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence.”²⁶ Prescription opioids such as oxycodone and fentanyl are, and always have been, Schedule II controlled substances.
22. CVS’s corporate representative testified that the CVS distribution centers at issue “are now, and have always been, only distributors of Schedule III through V controlled substances, and have never been distributors of Schedule II controlled substances.”²⁷ Thomas Moffatt, Vice President, Assistant Secretary and Assistant General Counsel of CVS Health, who has worked at CVS for over 20 years, also testified that to his knowledge, CVS has never distributed a Schedule II drug.²⁸ Additionally, Mark Nicastro, Director of the Indianapolis CVS Distribution Center, testified in his deposition that CVS distribution centers “do not carry C-II’s.”²⁹
23. Thomas Moffatt also testified that CVS’s DEA registrations “are for Schedules III through V;”³⁰ and Ronald Link, former Senior VP of Logistics for CVS Pharmacy, and John Mortelliti, Director of Asset Protection Supply Chain for CVS Health, confirmed that Schedule II drugs shipped to CVS pharmacies were supplied from outside vendors.³¹
24. I confirmed this testimony by reviewing the shipments reported in the ARCOS data. As part of my analysis, I used the ARCOS data to evaluate the distributor information for prescription medication classified as Schedule II controlled substances by the DEA. ARCOS Data shows that after filtering the

²⁴ “Drugs, substances, and certain chemicals used to make drugs are classified into (5) distinct categories or schedules depending upon the drug’s acceptable medical use and the drug’s abuse or dependency potential. The abuse rate is a determinate factor in the scheduling of the drug.” <https://www.dea.gov/drug-scheduling>.

²⁵ Discovery Ruling No. 2, Doc. No. 693 (June 30, 2018), p. 3.

²⁶ <https://www.dea.gov/drug-scheduling>.

²⁷ Deposition of Mark Vernazza, November 20, 2018, p. 56, line 5.

²⁸ Deposition of Thomas Moffatt, January 15, 2019, p. 37, line 24 - p. 38, line 2.

²⁹ Deposition of Mark Nicastro, December 6, 2018, p. 37, line 5.

³⁰ Deposition of Thomas Moffatt, January 15, 2019, p. 39, line 4.

³¹ Deposition of Ronald Link, December 11, 2018, p. 26, line 9 and p. 35, line 18; Deposition of John Mortelliti, January 23, 2019, p. 209, line 23.



transactions to shipments of Schedule II medication to Cuyahoga and Summit Counties, out of the 14 opioids³² relevant to this matter there are no shipments of any Schedule II opioids by CVS distribution centers.

IX. CVS DISTRIBUTED HYDROCODONE COMBINATION PRODUCTS ONLY WHEN THEY WERE CLASSIFIED AS SCHEDULE III AND CEASED DISTRIBUTING THEM WHEN THEY WERE RE-CLASSIFIED AS SCHEDULE II

25. CVS shipment data and ARCOS data shows CVS shipped HCPs through September 2014. During this time, HCPs were classified as Schedule III controlled substances. According to the DEA, Schedule III drugs are "drugs with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs."³³
26. Effective October 6th, 2014,³⁴ the DEA rescheduled HCPs from Schedule III to Schedule II.³⁵ Because these products became Schedule II controlled substances on this date, they fall within the universe of prescription opioids subject to discovery in this case even though they were not classified as Schedule II controlled substances before then. "Hydrocodone Combination Products are the only products ever distributed by the CVS Distributors into Cuyahoga and Summit Counties that meet this definition."³⁶
27. Notably, once the DEA rescheduled HCPs to Schedule II, CVS stopped distributing HCPs to its stores. CVS's corporate representative testified that "CVS ceased the distribution of hydrocodone combination products upon those products being upscheduled to Schedule II in October of 2014."³⁷ Additionally, CVS discovery responses reflect that "the CVS Distributors have not distributed hydrocodone combination products since they were reclassified as Schedule II on October 6, 2014."³⁸
28. In addition to reviewing deposition testimony and discovery responses, I analyzed the CVS distribution data for shipments of HCPs to Cuyahoga and Summit Counties.³⁹ I found that CVS distribution centers did not ship HCPs after September 2014. This finding is consistent with the testimony referenced above. Chart 1, below, shows the percentage of all shipments of HCP packages

³² Buprenorphine, Codeine, Dihydrocodeine, Fentanyl, Hydrocodone, Hydromorphone, Levorphanol, Meperidine, Methadone, Morphine, Opium (Powdered), Oxycodone, Oxymorphone, and Tapentadol.

³³ <https://www.dea.gov/drug-scheduling>.

³⁴ DEA Drug Scheduling Actions, <https://www.deadiversion.usdoj.gov/schedules/>.

³⁵ <https://www.govinfo.gov/app/details/FR-2014-08-22/2014-19922>.

³⁶ CVS Indiana, L.L.C.'s and CVS RX Services, Inc.'s Amended Objections and Responses to Interrogatories No. 1-6, 8-10, 13, 15-18, 20-21 and 30 of Plaintiffs' First Set of Interrogatories, September 10, 2018, p. 5.

³⁷ Deposition of Mark Vernazza, November 20, 2018, 2018, p. 20, line 2-5.

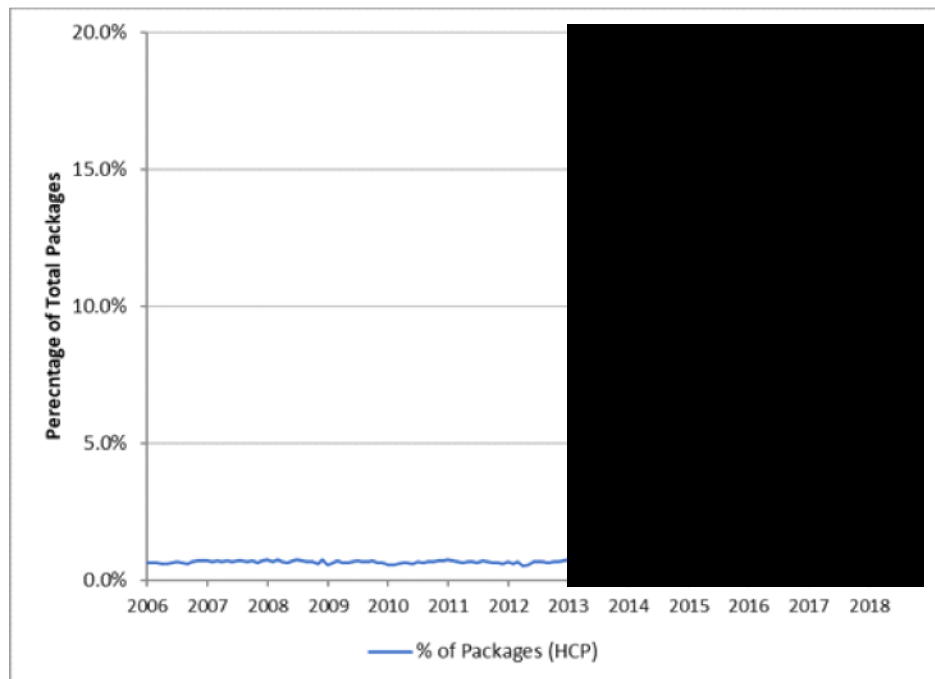
³⁸ CVS Indiana, L.L.C.'s and CVS RX Services, Inc.'s Amended Objections and Responses to Interrogatories No. 1-6, 8-10, 13, 15-18, 20-21 and 30 of Plaintiffs' First Set of Interrogatories, September 10, 2018, p. 5.

³⁹ The NDC number and drug name are redacted in the CVS Shipment Data for all drugs other than the prescription opioids at issue in this case, which for CVS is only HCPs.



from CVS distribution centers to pharmacies in Cuyahoga and Summit counties by year. As noted above, the only pharmacies to which CVS distribution centers shipped HCPs were CVS pharmacies.

Chart 1: CVS Distribution Center Shipments of HCPs to CVS Pharmacies in Cuyahoga and Summit Counties (CVS Distribution Data)



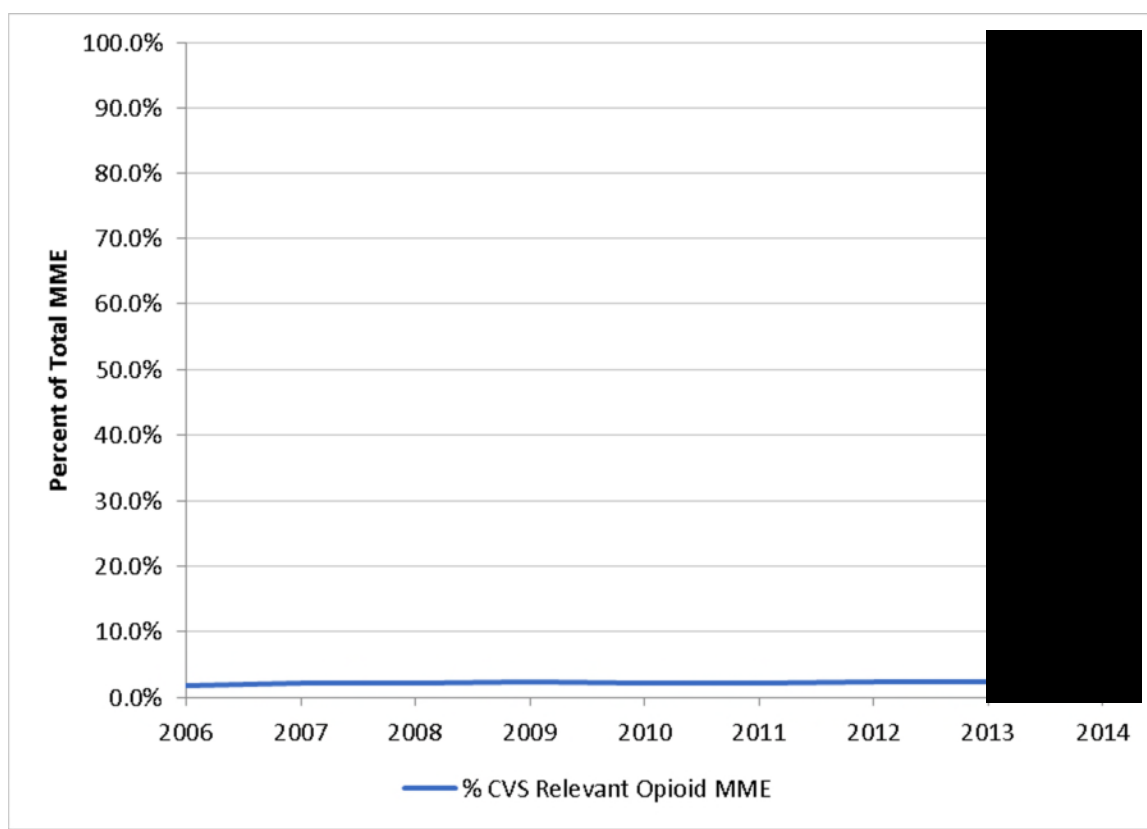
29. I also evaluated CVS shipments reported in the ARCOS data⁴⁰ and found shipments of HCPs from CVS through September 2014, but no shipments after the DEA rescheduled HCPs to Schedule II in October 2014. Specifically, the ARCOS data reflects that CVS Indiana, L.L.C. last shipped an HCP on April 9, 2014 and CVS Rx Services, Inc. last shipped an HCP on September 24, 2014 into Cuyahoga and Summit counties.⁴¹

X. CVS DISTRIBUTED [REDACTED] OF PRESCRIPTION OPIOIDS INTO CUYAHOGA AND SUMMIT COUNTIES

30. To determine CVS's share of prescription opioid distributions in Cuyahoga and Summit Counties, I compared the volume of prescription opioids distributed by CVS to the volume of prescription opioids shipped by all distributors. I focused my analysis to Discovery Ruling No. 2, which limited discovery to "opioid products that are or ever were classified as Schedule II under the Controlled Substances Act,"

⁴⁰ This analysis uses the filtered ARCOS data, as described in Section IV of this report.

⁴¹ This is consistent with the last date in the CVS distribution data of September 24, 2014.

**Chart 2: Percentage of Total MME to Cuyahoga and Summit Counties (2006 – 2014)**

33. I also compared CVS's distribution of all opioids to the market for the period through 12/31/2018. To do so, I extrapolated the ARCOS data from 1/1/2015 through 12/31/2018 for all opioid shipments.⁴⁷ I calculated the average growth rate of total opioid shipments from the last three years of available ARCOS data separately for Cuyahoga and Summit Counties. From this data, I calculated the average growth rate between 2012 and 2014 to be [REDACTED] per year for Cuyahoga County, and [REDACTED] per year for Summit County. To estimate the total annual opioid MME for years from 2015 through 2018, I multiplied the prior year's total opioid MME by the average growth rate separately for Cuyahoga and Summit Counties. I then summed the total opioid MME for all distributors in ARCOS for 2006 to 2018 from Cuyahoga and Summit Counties to calculate the total opioid MME for all distributors.
34. Between 2006 and 2018, CVS distributed [REDACTED] of the total opioid MME into Cuyahoga and Summit Counties. Specifically, for Cuyahoga County, CVS distributed [REDACTED] of the total opioid MME, and for Summit County, CVS distributed [REDACTED] of the total opioid MME.

⁴⁷ HCP shipments by CVS Distribution ended in September 2014, before the end of the ARCOS data and, therefore, I have not extrapolated CVS HCP shipments.